



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Avogadro Energy Systems

**File:** B-244106

**Date:** September 9, 1991

Raymond C. Fay, Esq., Bell, Boyd & Lloyd for the protester. James J. Drew, Esq., for the Federal Aviation Administration. Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that agency failed to follow the stated evaluation criteria in evaluating protester's proposal by applying unstated criteria is denied where the allegedly unstated criteria were reasonably related to the stated criteria.
2. Agency's evaluation of protester's proposal for aviation security research concerning "false alarm" data and luggage scanning is reasonable where the proposal does not contain supporting data for false alarms or indicate that the protester intends to scan actual luggage.
3. Protest that agency evaluators were biased is denied where there is no evidence in the record to support the allegation.

### DECISION

Avogadro Energy Systems protests the rejection of the proposal it submitted in response to Broad Agency Announcement (BAA) No. TCBA-90-001, issued by the Federal Aviation Administration (FAA) for aviation security research proposals.

We deny the protest.

### BACKGROUND

A BAA is a contracting method by which government agencies can acquire basic and applied research. BAAs may be used by agencies to fulfill requirements for scientific study and experimentation directed toward advancing the state of the art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. Under the Federal

Acquisition Regulation (FAR), a BAA is considered a competitive procedure and meets the requirements for full and open competition if it is general in nature, identifying areas of research interest including criteria for selecting proposals; solicits the participation of offerors capable of satisfying the government's needs; and provides for peer or scientific review. FAR § 6.102(d)(2). Unlike sealed bidding and other negotiated procurement methods, a BAA does not contain a specific statement of work and no formal solicitation is issued. In addition, the issuing agency is under no obligation to award any contracts and there is no common due date for proposals. Instead, the agency identifies a broad area of interest within which research may benefit the government, and publishes its desire to contract for such research. Private organizations are then invited to submit their ideas within a certain period of time. The offerors who submit proposals are not competing against each other but rather are attempting to demonstrate that their proposed research meets the agency's requirements. The agency may decide to fund those efforts and award contracts to those offerors who submit ideas which the agency finds suitable. See FAR § 35.016.

The BAA at issue here was published in the Commerce Business Daily (CBD) on October 12, 1989, and indicated that proposals could be submitted within the next year. The BAA informed potential offerors that the FAA was interested in receiving technical and cost proposals on research related to explosives detection, weapons detection, airport security, and security systems integration. The BAA notified offerors to include in their proposals an outline and discussion of the nature and scope of the research, method of technical approach, and expected results of the proposed effort. The BAA also advised offerors to include information on prior experience in the field of research and available facilities and resources. The BAA provided that proposals would be selected for negotiation based on technical considerations, importance to agency programs, and funds availability. Concerning technical considerations, the BAA provided that the following criteria, listed in descending order of importance, would be evaluated:

"(1) Technical merit - The proposal should contain a detailed technical discussion of the method of approach, including: a. Novelty of approach; b. Substantiation by calculations, specifications, test data, etc., of method of approach; c. Research of prior methods leading to choice of method of approach; d. Depth of research involved in choice of method. The reason for choosing the proposed method should be documented as well as the reason for rejecting any methods that were considered but not chosen;

(2) Understanding of the requirements and adequacy of scope - Demonstrated through a knowledge and understanding of current research being performed in this area, past studies, existing literature, and both the clarity and practicality of the offeror's proposed objectives;

(3) Professional talent, experience, and corporate capability - relating to aviation security research;

(4) Management plan and project scheduling - a realistic plan for accomplishing the effort of the proposal within the proposed time goals, as evidenced by project separation into viable components and/or milestones;

(5) Cost benefit - The overall estimated cost to accomplish the effort, including the expected benefits to be accrued in terms of the contribution to aviation security;

(6) Equipment and facilities - The availability of, or the ability to, obtain the necessary facilities to perform this effort;

(7) Technical/cost risk - The degree of technical and/or cost risk associated with the proposed research effort, and the extent to which the planned approach defines a schedule and deliverables in a realistic manner with appropriate milestones, phasing, and resources."

The BAA also warned offerors that in order to qualify for consideration for award a proposal must provide a realistically achievable program approach for satisfying the requirements of the FAA and should be appropriately scoped. Finally, the BAA reserved to the government the right to select for award any, all, a part, or none of the proposals received in response to the BAA.

Avogadro submitted a proposal in response to the BAA on October 10, 1990, entitled, "Compact High Explosive Detector." The proposal was evaluated by a three-person technical evaluation committee. Each member of the committee first individually evaluated the proposal and then the committee members reached a consensus decision. The committee recommended that the proposal not be funded because it contained several serious technical weaknesses. The committee also noted that Avogadro's proposal appeared to be a combination of two areas of research that the agency was currently funding. The contracting officer agreed with the committee's

recommendation, and on May 7, 1991, notified Avogadro that its research would not be funded. On May 16, Avogadro protested to our Office.

#### DISCUSSION

Avogadro first protests that the FAA's evaluation of the firm's proposal was unreasonable. In this regard, Avogadro argues both that the FAA applied undisclosed evaluation criteria to the firm's proposal instead of the criteria listed in the BAA and that the FAA overlooked material portions of the firm's proposal.

##### Failure to Follow Evaluation Criteria

Avogadro states that the FAA found the following weaknesses in the firm's proposal; (1) the proposed device was too complicated for airport deployment; (2) it appears that a substantial part of the work will be subcontracted to Stevens Institute of Technology (SIT), that most of the facilities are probably at SIT and that the offeror does not have much in the way of experimental facilities; (3) it did not contain a detailed list of equipment dedicated to the effort and a commitment letter from SIT verifying the ability of Avogadro to engage the equipment at all times; and (4) its device was not "commercial product oriented." Avogadro argues that there was no requirement for the device to be simple; it was specifically told that it would not be a problem if it subcontracted some of the work to an academic institution; there was no requirement for an equipment list or a commitment letter from any proposed subcontractors; and there was no requirement that the offered product be a commercial product. Avogadro therefore complains that since none of these reasons for downgrading its proposal reflected requirements of the BAA, the proposal was improperly evaluated.

Solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation. However, while agencies are required to identify the major evaluation factors, they are not required to identify the areas of each factor which might be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. Wyle Laboratories, B-239671, Sept. 19, 1990, 90-2 CPD ¶ 231. Here, we find the FAA's evaluation of Avogadro's proposal was consistent with the stated evaluation criteria.

The evaluation factors Technical Merit and Cost Benefit take into consideration the expected benefits to be realized in terms of the contribution to aviation security; Technical/Cost Risk is concerned with the degree of technical and/or cost risk associated with the effort. Whether an approach is too

complicated for the purpose for which it is proposed clearly falls within these factors. The evaluation factor Professional Talent, Experience and Corporate Capability is concerned with the attributes of the company that will actually be performing the work, and this reasonably encompassed whether Avogadro intended to subcontract some or all of the work. Likewise, whether Avogadro had sufficient experimental facilities, and whether it provided a list of equipment dedicated to the effort or submitted a letter of commitment from the subcontractor whose facilities it intended to use that it in fact could use those facilities, were clearly and reasonably related to the evaluation factor under which these items were considered, Equipment and Facilities. Finally, the FAA did not downgrade the proposal because Avogadro did not offer a commercially available device. Rather, under the evaluation factor Professional Talent, Experience and Corporate Capability, the evaluators noted that the proposed research and development effort is not commercial product oriented. This remark concerns the end result of the effort, that is, whether any product ultimately developed from the research can meet the requirements of the commercial market, not whether the product is already commercially available.

#### Failure to Consider Material Portions of Proposal

Avogadro complains that the evaluation of its proposal was unreasonable because the FAA failed to consider information concerning false alarms, a project management schedule and timetable, and the availability of equipment to perform the proposed research effort. The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties arising out of a defective evaluation. Accordingly, our Office will not disturb an agency's evaluation provided it was reasonable and in accordance with the stated evaluation factors. Steridoc Corp., B-225752, Apr. 29, 1987, 87-1 CPD ¶     , recon. den., B-225752.2, June 24, 1987, 87-1 CPD ¶ 628.

The evaluators found that a major weakness in Avogadro's proposal was the firm's failure to include supporting data concerning false alarms,<sup>1/</sup> and that the firm did not give any consideration to scanning actual luggage. Avogadro argues that it devoted an entire section of its proposal to each of these areas and that many of the figures and diagrams in its

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<sup>1/</sup> A false alarm refers to an alarm that is set off by an explosive detection system when a piece of luggage is mistakenly determined by that system to contain some sort of explosive.

proposal report false alarm data. Our review of the proposal demonstrates that it does generally mention false alarms and luggage testing. Thus, for example, on page 6 of its proposal Avogadro states:

"In general, any high-explosive (HE) contains Hydrogen, Carbon, Nitrogen and Oxygen. The most untypical element in terms of abundance in the luggage is Nitrogen, and Nitrogen is usually treated as the primary target for detection. A false alarm may also occur because of the presence of substances such as proteins or fabrics made from silk, wool, nylon or orlon in the scanned area.

In recognizing the importance of eliminating these types of spurious events, we have made a search for determining an integral method for the detection of HE (including mines) which is based on information related to all the HE components listed above."

On page 8 the proposal states that "what defines a good . . . system is a low false alarm probability." However, the proposal does not discuss how its approach addresses false alarms or contain calculations and data concerning false alarms. Likewise, while the proposal mentions luggage testing of experimental samples put together by Avogadro, it does not mention testing actual luggage. Accordingly, we have no basis to conclude that the agency's evaluation in this regard was unreasonable.

Avogadro also asserts that at the debriefing it was told that two major weaknesses in its proposal were that it did not include a project management schedule and timetable for the proposed tasks and that it did not clearly articulate that Avogadro owned or had access to certain equipment it would need to perform the proposed research. Avogadro complains that its proposal did in fact contain a detailed schedule of the project and also indicated that it had all the necessary equipment to perform. Avogadro therefore concludes that the proposal evaluation was unreasonable.

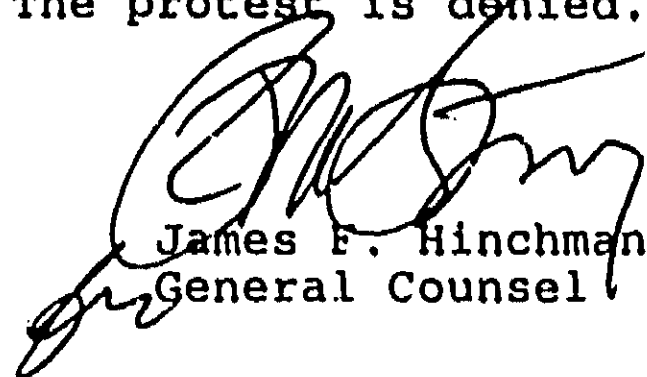
Our review of the evaluation documents demonstrates that one reviewer did downgrade Avogadro for failing to have a management schedule and one reviewer did question whether Avogadro had the necessary equipment to perform. In neither case, however, did these findings become part of the committee's consensus decision or final evaluation summary. In fact, the evaluation summary mentions Avogadro's management schedule as a strong point of the proposal. Consequently, there is no basis to conclude that Avogadro was prejudiced by any oversight of the evaluators in these areas.

### **Alleged Evaluator Bias**

Avogadro protests that the evaluators were biased against the firm's proposal due to their relationship with Science Applications International Corporation (SAIC), a competitor of Avogadro, who submitted a number of proposals in response to the BAA. In reply, the FAA reports that two of the evaluators of Avogadro's proposal were technical representatives on two SAIC contracts and as such were required to monitor SAIC's performance and discuss issues with SAIC arising under those contracts. The agency reports, however, that none of the evaluators discussed Avogadro's proposal with anyone outside of the evaluation team.

There is no indication in the record of bias or bad faith on the part of the evaluators, and Avogadro offers no such evidence. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or supposition. Danville-Findorff, Ltd., B-241748, Mar. 1, 1991, 91-1 ¶ 232.

The protest is denied.



James F. Hinchman  
General Counsel